

SERVICE DATE – MARCH 3, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34354

MAUMEE & WESTERN RAILROAD CORPORATION AND RMW
VENTURES, LLC – PETITION FOR DECLARATORY ORDER

Decided: March 2, 2004

By a petition filed on May 6, 2003, Maumee & Western Railroad Corporation (Maumee) and RMW Ventures, LLC (RMW) (collectively, petitioners) jointly seek the institution of a declaratory order proceeding to determine whether local condemnation proceedings by the City of Napoleon, OH (City), to acquire an easement for a road crossing over and subsurface utilities under an 8,000 sq. ft. parcel of main line right-of-way, which is owned by RMW and operated by Maumee, are preempted by 49 U.S.C. 10501(b).¹ On May 23, 2003, the City filed a reply. On June 9, 2003, petitioners filed a motion for a procedural order, and, on June 23, 2003, the City replied. For the reasons discussed below, petitioners' request for institution of a declaratory order proceeding will be denied.

BACKGROUND

Petitioners own and operate approximately 51 miles of rail line from Liberty Center, OH, to Woodburn, IN, running through the City (the line). The City desires to construct a two-lane public street to connect a planned industrial park with the City. By resolution, the City authorized the acquisition of an easement over RMW's property so that it may construct a public at-grade crossing over the line. After the parties failed to reach an agreement concerning the at-grade crossing, the City, on May 16, 2003, petitioned the Common Pleas Court of Henry County, OH (the Ohio court), to acquire an easement over the line by eminent domain pursuant to Ohio statute. Petitioners sought to have the court proceeding removed to the United States District Court for the Northern District of Ohio (Western Division). Neither the Ohio court nor the Federal court has, to date, sought the Board's opinion regarding this matter.

¹ Petitioners filed a similar petition with the Board on October 21, 2002, but, upon the request of petitioners, the proceeding was discontinued in a decision served on December 5, 2002.

DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. 554(e) and 49 U.S.C. 721 to issue a declaratory order to eliminate a controversy or remove uncertainty. Here, however, there is no need for the Board to institute a proceeding.

The Federal preemption provision contained in 49 U.S.C. 10501(b), as broadened by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995), protects railroad operations that are subject to the Board's jurisdiction from state or local laws or regulations that would prevent or unreasonably interfere with those operations. See City of Auburn v. STB, 154 F.3d 1025, 1029-31 (9th Cir. 1998), cert. denied, 527 U.S. 1022 (1999). But this broad Federal preemption does not completely remove any ability of state or local authorities to take action that affects railroad property. To the contrary, state and local regulation is permissible where it does not interfere with interstate rail operations, and localities retain certain police powers to protect public health and safety. See Joint Petition for Declaratory Order — Boston and Maine Corporation and Town of Ayer, MA, STB Finance Docket No. 33971, slip op. at 9 (STB served May 1, 2001). Thus, acquisition of an easement by eminent domain to permit a crossing of railroad track in connection with construction of a new public street would not implicate the Federal preemption of 49 U.S.C. 10501(b) unless it would prevent or unreasonably interfere with railroad operations.

Maumee's primary argument here is that section 10501(b) would preempt any exercise of state eminent domain power with respect to railroad property, but this interpretation is overbroad. Courts have held that Federal preemption can shield railroad property from state eminent domain law, but these holdings have been in situations where the effect of the eminent domain law would have been to prevent or unreasonably interfere with railroad operations. See, e.g., Wisconsin Central Ltd. v. City of Marshfield, 160 F. Supp.2d 1009 (W.D. Wis. 2000) (state eminent domain action preempted where passing track necessary to railroad's operations would have been eliminated); Dakota, Minnesota & Eastern R.R. v. South Dakota, 236 F. Supp.2d 989 (D. S.D. 2002) (recently added sections of state's eminent domain law that would have unreasonably interfered with future railroad operations preempted). But neither the court cases, nor the Board's precedent, suggest a blanket rule that any eminent domain action against railroad property is impermissible. Rather, routine, non-conflicting uses, such as non-exclusive easements for at-grade road crossings, wire crossings, sewer crossings, etc., are not preempted so long as they would not impede rail operations or pose undue safety risks.

These crossing cases are typically resolved in state courts. When federal preemption issues are raised they may be removed to federal court. In either case, courts can, and regularly do (sometimes with input from the Board through referral), make determinations as to whether proposed eminent domain actions would impermissibly interfere with railroad operations. The concerns that Maumee has raised here are generalized and of the type that the courts are well-suited to address. Should the court

request Board assistance in assessing those issues, the Board remains available. In the meantime, however, Board involvement does not appear to be necessary or appropriate.

Accordingly, petitioners' request for institution of a declaratory order proceeding will be denied.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Petitioners' request for a proceeding is denied.
2. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary